

Joint Committee on Boards, Commissions, and Consumer
Protection

**BACKGROUND PAPER FOR
HEARING
December 6, 2005**

**OCCUPATIONAL THERAPY
BOARD**

BACKGROUND, IDENTIFIED ISSUES, AND QUESTIONS

**BRIEF OVERVIEW OF THE OCCUPATIONAL
THERAPY PROFESSION AND THE
OCCUPATIONAL THERAPY BOARD**

This is the first review of the Board of Occupational Therapy (Board). The Board was established via statute in 2000 [SB 1046 (Murray), Chapter 697, Statutes of 2000], and became operative on January 1, 2001.

The Board is responsible for the licensure and regulation of Occupational Therapists (OTs), and Occupational Therapy Assistants (OTAs). Prior to the licensure act in 2000, the occupational therapy profession in California was regulated only by a title act dating back to 1977 that prohibited individuals from using the professional titles “occupational therapist” and “occupational therapy assistant” without appropriate professional training. The title act was amended in 1993 to clarify what education and examination requirements OT practitioners had to satisfy. The prior law did not mandate any state registration process, nor did it prevent an unqualified individual from practicing occupational therapy as long as the individual did not refer to himself or herself using the professional titles quoted above.

According to the Board’s Sunset Report, the focus of occupational therapy is on an individual’s ability to effectively engage in performance areas that are “purposeful and meaningful,” such as activities of daily living, work, and other productive activities. OT practitioners provide health and rehabilitation services

to people of all ages who, because of illness, injury, developmental or psychological impairment, need specialized intervention to regain, develop, or build skills necessary for independent functioning.

The Board is composed of seven members: three OTs, one OTA, and three public members. The OTA position and one of the public members are currently vacant.

Member's Name	Appointed By	Type	Appointment Date	Expiration Date
Luella Grangaard (OT)	Governor	Professional	6/18/03	12/31/06
Christine Wietlisbach (OT)	Governor Appointee	Professional	03/09/05	12/31/08
Margaret Cunningham	Governor Appointee	Public	6/18/03	12/31/06
Mary Evert (OT)	Governor Appointee	Professional	3/09/05	12/31/07
Collins E. "Hugh" Smith, Jr.	Senate Rules	Public	3/14/01	12/31/04
Vacant position (OTA)	Governor Appointee	Professional		
Vacant position	Assembly Speaker	Public		

After issuing its first license in 2002, the Board now licenses 8,732 OTs, 373 limited permit-OTs, and 1,549 OTAs along with 51 limited permit-OTAs.

Limited permit licensees are those individuals who have completed the education and experience requirements and are allowed to practice under the supervision of an OT for up to four months while waiting to take the licensing examination or awaiting the results of the exam. The limited permit privileges cease if the individual fails to pass the examination on the first attempt.

In addition to the OT license, the Board also certifies OTs in three advanced practices, if the OT completes additional education and training. The three advanced practice certifications are for hand therapy, physical agent modalities (the use of heat, cold, water, electricity, light, and mechanical devices), and swallowing assessment, evaluation or intervention. There are 1,180 advanced practice certificates in hand therapy, 1,236 certificates in physical agent modalities, and 655 certificates in swallowing assessment, evaluation and intervention.

The Board was initially funded with a start-up loan from the General Fund of up to \$1 million, of which the Board was appropriated \$610,000 for the initial fiscal year of 01/02. While the loan was required to be repaid over a period of five years, the loan was paid off in fiscal year 2003/04, with a total payoff amount, including interest, of \$700,000.

The Board currently has revenue of approximately twice their expenditures. The Board had revenues in fiscal year 2004/05 of \$1,381,075, primarily from licensing fees, with a small amount from interest, fines and penalties, and projects revenues to increase to \$1,482,000 in the upcoming fiscal years. The Board's expenditures for fiscal year 2004/05 totaled \$663,836, and the Board projects

expenditures to increase to \$741,000 in the next two fiscal years. The large excess in revenues as compared to expenditures is addressed in Issue #2.

The Board reports the following major changes since the Board was established:

- Adoption of numerous regulations as part of the establishment of a new regulatory board, including regulations establishing fees; authorizing the issuance of citations and fines; regulations pertaining to ethical standards of practice; identifying requirements for advanced practice certificates; setting forth supervision requirements; establishing disciplinary guidelines; and, setting forth continuing competency requirements.
- SB 1244 (Figueroa), Chapter 1079, Statutes of 2002, authorized the Board to take disciplinary action.
- SB 1402 (Murray), Chapter 823, Statutes of 2002, clarified requirements for hand therapy and other advanced practices.
- SB 1077 (Committee on Business and Professions), Chapter 607, Statutes of 2003, clarified the license exemption for visiting occupational therapists.
- SB 1913 (Committee on Business and Professions), Chapter 695, Statutes of 2004, permitted OTs certified in physical agent modalities to apply topical medications that were prescribed by a physician, and deleted language requiring applicants who had not been actively engaged in the practice of occupational therapy to complete a Board-approved education program.
- Creation of a web site that includes online license/certificate verification.
- Participation on the Older California Traffic Safety Task Force and creation of a directory listing Driver Safety and Rehabilitation programs.

The following are areas of concern for the Joint Committee, along with background information concerning the particular issue. There are questions that staff have asked concerning the particular issue. The Board was provided with these issues and questions and is prepared to address each one if necessary.

CURRENT SUNSET REVIEW ISSUES

ISSUE #1: Should the Board be continued?

Issue #1 question for the Board: *Is an appointed board the most appropriate regulatory entity for the occupational therapy profession? Why or why not? Why is an independent board more appropriate than a bureau with more direct accountability to the Governor? Does the profession continue to necessitate regulation in the first place?*

Background: California Business and Professions Code Section 473.3 states that “Prior to the termination, continuation, or reestablishment of any board or any of the board’s functions,” the Joint Committee on Boards, Commissions, and Consumer Protection is required to hold public hearings, during which “each board shall have the burden of demonstrating a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.”

Additionally, Governor Schwarzenegger proposed in January of this year to eliminate 88 boards and commissions, including eliminating all of the boards within the Department of Consumer Affairs and converting most of them to bureaus. This Government Reorganization Proposal was based partly upon recommendations from the Governor’s California Performance Review (CPR), but went further in recommending board elimination than did the CPR. The Governor withdrew this proposal in February.

ISSUE #2: Is the Board taking appropriate action regarding its budget surplus?

Issue #2 question for the Board: *With revenues more than doubling expenditures each year of the Board’s existence, why did it take so long to propose a fee reduction? Why did the Board withdraw its initial fee reduction proposal? Explain the status of the current fee reduction proposal. With projections showing the reserve fund dropping every year with this fee reduction, won’t the Board have to raise its fees again in the near future? Did the Board explore other ways of addressing its large surplus, such as rebating licensing fees that were already paid, so that licensing fees could be set at a level that kept revenues closely matched with expenditures?*

Background: As discussed earlier, the Board had revenues in fiscal year 2004/05 of \$1,381,075, and projects revenues to increase to \$1,482,000 in the upcoming fiscal years. The Board’s expenditures for fiscal year 2004/05 totaled \$663,836, and the Board projects expenditures to increase to \$741,000 in the next two fiscal years. Obviously, with revenues about twice the amount of expenditures, the Board is quickly going to amass large surpluses, which is evident in their projected fund reserves. Already, the fund reserve was at 21.7 months, or \$1,337,000, at the end of fiscal year 2004/05. Based on current fees, the reserve is projected to increase to 69 months, or \$4,519,000, by the end of fiscal year 2008/09.

The Board submitted a renewal fee reduction proposal earlier in the year to reduce the renewal fee from \$150 to \$70 beginning in fiscal year 2006/07, with an additional one-time reduction from \$150 to \$10 during fiscal year 2005/06 in order to keep the Board’s reserve fund from exceeding 24 months. However, the

Board states that this proposal was withdrawn at the request of State and Consumer Services Agency, which was opposed to the drastic one year only reduction.

The Board submitted a new regulatory proposal that would decrease the renewal fee from \$150 to \$50, beginning in January 2006. If the fee reduction is implemented by January, the Board's reserve level at the end of this fiscal year (2005/06) is expected to be 26.8 months, or \$1,656,000, and to continue dropping each year. By fiscal year 2008/09, the reserve is projected to be at \$1,112,000, or 17 months.

However, this fee reduction proposal is still at the Department of Consumer Affairs, and the Board's executive officer reports to Joint Committee staff that this fee proposal is being reconsidered. There is some concern that this fee reduction is too steep, given certain increased costs, including higher rent from an upcoming move to larger office space and new equipment needs.

Generally speaking, the goal for most regulatory boards is to have a reserve of no more than 6 months, although depending on the size of a board's fund and how much revenues and expenditures fluctuate, it is sometimes appropriate for a larger or smaller reserve fund.

ISSUE #3: Should the license renewal period be extended from one year to two years?

Issue #3 question for the Board: *Why does the Board require licenses to be renewed annually? Was it a choice, or does the Board believe it is required to do so under statute? What would be the savings achieved, if any, by switching to a two-year renewal period? Is there any reason to require annual license renewals?*

Background: While the common practice for most regulated professions is for licenses to be renewed every two years, OTs and OTAs must renew their licenses every year. The Occupational Therapy Practice Act does not appear to mandate annual renewal; it states that "the board shall issue a license to any applicant who meets the requirements of this chapter, including the payment of the prescribed licensure, certification, or renewal fee, and who meets any other requirement in accordance with applicable state law" (Business and Professions Code Section 2570.9). The law goes on to state that "Initial license or certification and renewal fees shall be established by the board in an amount that does not exceed a ceiling of \$150 per year" (Business and Professions Code Section 2570.16).

Having a two-year renewal period, as opposed to a single year, is generally cheaper from an administrative perspective, since paperwork must only be handled every other year per licensee. Additionally, for those boards requiring

continuing education (see Issue #3 below), a two-year renewal period can often provide more flexibility to the licensee as to when he or she acquires the additional education or training.

ISSUE #4: Are the continuing education requirement adopted by the Board necessary and appropriate?

Issue #4 question for the Board: *Why does the Board believe that continuing education is necessary? Does the Board have any data to show that harm is being caused to the public by its licensees as a result of them not having taken continuing education? Do the Board's disciplinary cases show that licensees are performing incompetently because of a lack of updated knowledge? Has the Board done any research regarding how many of its licensees currently participate in continuing education on a voluntary basis? What assurances would the Board have that continuing education will be targeted in a useful manner, such as common practice deficiencies or emerging techniques? What would be the fiscal impact to the Board of this proposed requirement?*

Background: The Occupational Therapy Practice Act states that “in addition to any other qualifications and requirements for licensure or certification renewal, the board may by rule establish and require the satisfactory completion of continuing competency requirements as a condition of renewal of a license or certificate.” [Business and Professions Code Section 2570.10 (b).]

In April of 2005, regulations were adopted to require both OTs and OTAs renewing an active license to submit evidence of having completed 12 professional development units (PDUs) during the preceding renewal period. As discussed above, OTs and OTAs must renew their licenses every year, so this is an annual mandate. The Board defined one PDU as equivalent to 50 minutes of participation in a professional development activity. Professional development activities include, but are not limited to, programs or activities sponsored by the American Occupational Therapy Association or the Occupational Therapy Association of California; post-professional coursework completed through any approved or accredited educational institution that is not part of a course of study leading to an academic degree; or otherwise meet all of the following criteria:

- The program or activity contributes directly to professional knowledge, skill, and ability;
- The program or activity relates directly to the practice of occupational therapy; and,
- The program or activity must be objectively measurable in terms of the hours involved.

The Board states that practitioners can earn professional development units at no or low costs by participating in the following activities:

- Involvement in structured special interest or study groups with a minimum of three participants;
- Structured mentoring with an individual skilled in a particular area;
- Structured mentoring of a colleague to improve his/her skills;
- Supervising the fieldwork of Level II occupational therapy and occupational therapy assistant students;
- Publication of an article in a publication, both peer reviewed and non-peer reviewed;
- Publication of chapter(s) in an occupational therapy or related professional textbook; and,
- Making first time professional presentations at workshops, seminars and conferences.

Of the 12 PDUs required for each renewal period, a minimum of 6 units must be directly related to the delivery of occupational therapy services. Practitioners who earn more than 12 PDUs in a single renewal period can carry three units into the next renewal period.

While government has struggled with the issue of what steps might be required to assure that licensed professionals maintain continued competency in their profession following initial licensure, generally where any action has been taken it has been to mandate continuing education. While on its face continuing education would seem to assure that practitioners are exposed to ongoing education related to their profession, the value of mandating continuing education has been questioned in the past. Professional associations often push for continuing education, but these associations also are often providers of continuing education, and therefore financially benefit from a continuing education requirement. Other issues regarding the efficacy of mandating continuing education include the relevance of the courses, assurance of actual attendance, and whether a practitioner will actually participate and learn if compelled (rather than by voluntarily doing so by choice).

The Physical Therapy Board, also under review this year, does not currently require continuing education, but is proposing this year to require 30 hours every two years for physical therapists, and none for physical therapist assistants.

ISSUE #5: Should the statute that provides a licensure exemption for OT practitioners licensed in another state to work in California for up to 45 days be revised to instead require out-of-state OT practitioners to apply for licensure in California and allow them to practice for up to 60 days while the application is being processed?

Issue #5 question for the Board: *What is the problem that is being addressed with this proposal? The Board states that it proposed regulations to implement the existing licensure exemption, but were withdrawn because they were “unenforceable.” What does this mean? If the Board is moving away from the idea of a license exemption and instead requiring California licensure for out-of-state licensees, what purpose is served by permitting an individual to practice without a license for 60 days? The existing limited permit license for applicants awaiting the results of their licensing exam requires the person with a limited license to practice under the supervision of a licensed OT, yet the language submitted for this out-of-state permit does not contain this limitation – why not?*

Background: The Board has submitted to the JCBCCP language that would permit OTs licensed in another state to practice in California for up to 60 days after applying for licensure as an OT or OTA in California.

Under current law, there is no licensure reciprocity with other states. In order to practice in California, you must be licensed in California. However, the Occupational Therapy Practice Act does contain a provision (B&P Code 2570.4 (d)) that exempts from licensure those OT practitioners licensed in other states with standards as stringent as those in California, to work up to 45 days in a calendar year in association with an OT licensed by the Board.

The Board states in its sunset report that it proposed regulations to implement this provision, but withdrew the regulations because they were seen as unenforceable. It is not clear what the Board meant by unenforceable. The Board states that the State and Consumer Services Agency suggested that the Board seek legislation to change the law to require out-of-state practitioners to become licensed in California, while granting them a timeframe to work while their application is being processed.

ISSUE #6: Should a “retired” license status be established in order to allow retired OT and OTA practitioners to continue using the title OT or OTA as long as they included the word “retired” next to their title?

Issue #6 question for the Board: *What is the reason for this proposal? What would retirees be exempt from and what would they be allowed to do? Is it clear under existing law that retired OTs and OTAs would not be able to use their former professional titles even if it was made clear that he or she was retired by adding “retired” next to their titles? Is there any risk of consumer confusion? How to other professions handle this issue?*

Background: The Board has submitted language to JCBCCP that would permit someone with a license that is current and active or capable of being renewed to apply for a retired license. The holder of a retired license would be prohibited from engaging in any activity for which an active license is required, and would be required to include the term “retired” along with any reference to their OT title, without any abbreviation of the term “retired.” The fee for a retired license would be \$25, and would not be required to be renewed.

Under current, only those licensed as an OT or OTA are permitted to use the titles or abbreviations of an occupational therapist, as specified. The Board states that allowing those who have retired from the profession to obtain a “retired” license will make it possible for retired OTs and OTAs to continue to serve in office if elected within the Occupational Therapy Association of California or the American Occupational Therapy Association, as they could still call themselves OTs and OTAs.

ISSUE #7: Should the long term strategy of the Board be to move away from advanced practice certifications and instead seek to ensure that educational programs are appropriately training all future practitioners in these areas so that they can be part of the scope of practice for all license holders?

Issue #7 question for the Board: *If the standards developed by the Accreditation Council for Occupational Therapy Education (ACOTE) allow for inconsistency between degree programs, does this indicate the Board should be concerned with the quality of education outside of the three advanced practice areas? What percentage of schools are adequately training students in hand therapy, physical agent modalities and swallowing in their current programs? If ACOTE standards changed sufficiently to allow all future licensees to practice in hand therapy, swallowing or physical agent modalities, how would the Board handle existing licensees? Would advanced practice certifications still need to be given to practitioners who were educated under the old standards? What is wrong with using advanced practice certifications? How do other states handle this issue? How common is the need to use these three advanced practice techniques in the field of occupational therapy?*

Background: The Board states that during testimony before the Legislature when the profession was seeking to pass its licensure act, the Occupational Therapy Association of California was unable to articulate standards demonstrating specific professional occupational therapy instruction in certain areas. Due to the lack of specificity in professional OT education, the initial development of the Occupational Therapy Practice Act required advanced practice certifications in hand therapy, physical agent modalities, and swallowing assessment, evaluation or intervention to meet the need. The Board states that

it has continuously had to deal with issues that arise from this section of law, and that only California has this specialized identification of the specific practice areas of hand therapy, physical agent modalities, and swallowing.

The Board states that the educational standards set by ACOTE are dependent upon interpretation by individual degree programs which dilutes consistency in OT education and the ability to argue that OT education is consistent and that each entry level practitioner is equally prepared to deliver quality and safe OT services. Requiring minimum hours of instruction in all areas of occupational therapy services, such as hand therapy, swallowing and the use of physical agent modalities, would ensure entry level competency and consumer protection.

The Board states that the Occupational Therapy Association of California and the Board have participated in discussions at the national level regarding the need for accreditation standards for OT and OTA programs to be consistent. Testimony has focused on making OT education more consistent from program to program, and from state to state. However, focusing just on the programs in California is not enough because a majority of the practitioners have been trained outside of California.

The Board states that while advanced practice certifications are being used to meet the need, in the long term it seems that if the profession is working in these specific areas, the education should be reflective of this practice to assure competence in the entry-level practitioner.